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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAR 31 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

PR Docket No. 93-35

Amendment of the Commission's Rules To )

RM-7986

Provide Channel Exclusivity To Qualified )

Private Paging Systems At 929-930 MHz )

To: The Commission

**PARTIAL OPPOSITION TO, OR COMMENTS ON,  
APCP PETITION FOR RECONSIDERATION**

American Mobilphone, Inc. ("AMI"), by its attorneys and pursuant to Section 1.429(f) of the Commission's Rules and the Commission's Public Notice, Report No. 1999 (Erratum), released March 11, 1994, 59 Fed.Reg. 12327 (March 16, 1994), hereby responds to the Petition for Reconsideration and/or Clarification ("Petition") filed December 27, 1993 by the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. ("APCP"), as well as to various comments filed in support of the APCP Petition. American has described the instant response (hereafter "Partial Opposition") as alternatively a "partial opposition" or "comments", because the exact scope of relief sought by APCP is unclear, and it is therefore unclear whether American would be prejudiced by the relief sought by APCP.

Specifically, this Partial Opposition deals solely with that portion of the Petition seeking to change the area of exclusivity for regional 929 MHz licenses. APCP seeks a rule change to give regional licensees exclusivity throughout a state if the involved

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licensee has a least one transmitter in that state.<sup>1</sup> APCP also seeks an exception to its proposed "one transmitter=statewide exclusivity" rule for states which contain a top-30 market. American herein requests that, if the Commission does adopt APCP's proposed "one transmitter=statewide exclusivity" rule, the Commission not apply APCP's "top-30 state exception" so as to strip a regional licensee of the exclusivity that it holds under the current regional exclusivity rule.

**I. American Currently Has a Regional Exclusive System Covering Six States, Including the Florida Panhandle (but Not Miami or Tampa)**

American currently meets the requirements to qualify as a regional exclusive 929 MHz licensee on 929.8125 MHz in Florida, Georgia, Tennessee, Alabama, Mississippi and Louisiana. The Florida portion of American's regional system includes nine transmitters stretching from Tallahassee to Pensacola, an area of Florida long served by American's 462 MHz regional PCP system and an area which is critical to American's 929 MHz system as well. This portion of Florida has many commercial links with the adjoining portion of Georgia, Alabama and Mississippi which are also part of American's 929 MHz system. Under current FCC rules, American will be the exclusive 929.8125 MHz licensee within 70 miles of any of American's nine Florida transmitters.

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<sup>1</sup> Under current Sections 90.495(a)(2) and 90.495(b) of the Commission's Rules, regional exclusive licensees are protected for a 70-mile radius around each regional exclusive transmitter location.

However, Florida is home to two top-30 markets -- Miami and Tampa/St. Petersburg, neither of which are served by American's regional system. If APCP's proposal for "statewide-but-not-top-30" exclusivity for regional licensees means that American's exclusivity in Florida would not extend beyond the current composite 70-mile radii around American's transmitters, then American does not oppose APCP's Petition. Conversely, if APCP's proposal means that American's failure to serve Miami and Tampa will eliminate all of American's exclusivity rights in the state of Florida, then American opposes APCP's Petition.

**II. American's Decision to Design Its Regional System to Serve Less Than All of a State Containing a Top-30 Market Should Note Strip American's System of Its Grandfathered Exclusivity Earned under the Current Rules.**

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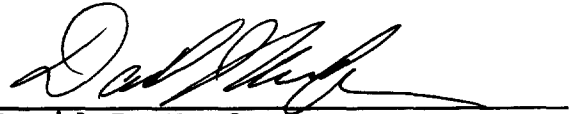
The public interest is best served by construing APCP's Petition in such a manner as to avoid retroactive elimination of vested exclusivity rights of American and similarly-situated regional licensees. Such a construction would avoid punishing licensees such as American that relied on the current rules, and would avoid the spectre of the entire exclusivity regimen being attacked and overturned in court as arbitrary and capricious.

Accordingly, American requests that if the Commission decides to adopt APCP's proposal for statewide exclusivity for regional licensees, that the Commission also provide that where (as with American's stations in the Florida panhandle) a regional licensee does not serve a top-30 market and thereby does not qualify for statewide exclusivity, the regional licensee will still qualify for

exclusivity in accordance with the separation criteria set forth  
in Section 90.495(b) of the Commission's Rules.

Respectfully submitted,  
**AMERICAN MOBILPHONE, INC.**

By:



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March 31, 1994  
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**Certificate of Service**

I, JacLyn Freeman, a legal secretary with Brown Nietert & Kaufman, Chartered, do hereby certify that I have this 31st day of March, 1994, caused to be mailed, first class, postage prepaid the foregoing "Partial Opposition to, or Comments on, APCP Petition for Reconsideration" to the following:

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